IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 249 of 2003

with

SPECIAL CIVIL APPLICATION No 573 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAKASHBHAI CHIMANLAL JAISHWAL

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL, MR HR PRAJAPATI for Petitioners

MR SUDHANSHU PATEL AND MS MITA PANCHAL, AGP for Respondents

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 11/06/2003

ORAL JUDGEMENT

#. In this group of two petitions, the challenge is against the detention orders made against the detenus by the respective detaining authority in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act"), on various grounds, however, since one of the questions which goes to the rood of the matter is identical in both the matters, upon request of the learned advocates for the parties, both these petitions are heard together and are being disposed of by this common judgment.

#. Liberty is a basic and dynamic jurisprudential concept and philosophy, and therefore, it has constitutional and statutory safeguards for the preservation, projection and protection of the liberty of an individual. Since it is a dynamic aspect and concept, continued research is necessary to regularly assess the changing dimension and dynamics of such a constitutional right, personal right of liberty guaranteed under the Constitution, the highest law of the land.

#. Preventive detention has long standing and deep rooted base in this country. The preventive detention is a serious in-road and encroachment on the liberty of a person. All human beings are born with free and equal rights. All human beings are, no doubt, gifted by their creator with certain unalienable, nontransferable, nonnegotiable natural rights. Justice, liberty and equality have been pursuits of human kind and are sine qua non for organized civilized society. Preservation of human life is the most important right for an individual. The personal liberty has been claimed, and, as such, has been acclaimed as a part of the right to life and for the development and protection of this concept, Courts have taken utmost care to protect various aspects of personal liberty as part of protection of life. Article 21 provides for everyone, right to life, liberty and security of person. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22(5) also provides requisite and sufficient safeguards while encroaching upon the right to personal liberty of an individual. Under various detention laws, the competent authorities are empowered to pass order of detention, provided material and important constitutional and statutory safeguards are observed, and subjective satisfaction has

been reached on an objective assessment of the sufficient material. With this prefatory profile of the preventive detention law, it would be interesting and imperative to assess, evaluate and adjudicate upon the challenge against the detention order in this petition on the basis of the material emerging from the record.

#. The learned advocates appearing for the detenus and the learned Assistant Government Pleaders appearing for the respondents are heard and they have taken this Court through the entire documentary evidence emerging from the record in this group of petitions. This Court has also taken into consideration the relevant statutory setting and constitutional profile, apart form the factual matrix of each case.

#. After having considered the factual spectrum emerging from the record of these two petitions, the rival submissions and the relevant legal settings, this court is of the clear opinion that the continued detention of the detenus is not at all justified, and therefore, interference is warranted for quashing and setting aside the detention orders.

#. Section 9 of the PASA Act prescribes the grounds for the order of detention to be disclosed to the detenu. There is a purpose and policy behind it. When a person is detained in pursuance of the order of detention, it is incumbent upon the authority, within the prescribed time limit, to communicate the grounds on which the order has been made so that he can make, at the earliest point of time, representation against the order of detention to the State Government. Sub-section 2 of Section 9 of the PASA Act provides that nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose. A contention is raised in this group of matters that the detention order made on the ground that the subjective satisfaction was rendered by the detaining authority is ill founded. Obviously, mere statement of having verified the veracity, genuineness and correctness of the fear expressed by the witnesses under certain circumstances can be of no virtue in absence of contemporaneous material. There is no any contemporaneous material spelt out from the record which would support the detention order. The detention order stands vitiated for want of proper exercise of powers under Section 9(2) of the PASA Act. Obviously, therefore, the resultant infringement of such constitutional redressal or right of the detenu of making effective representation due to non disclosure of names

of witnesses vitiates such detention orer. The detaining authority is bound to consider all the relevant facts and circumstances, and take all appropriate safeguards, statutory and constitutional, viability, since the detention order under the preventive detention law empowers the authority concerned to detain a person without trial for a period of one year. Disclosure of names and addresses of witnesses can be withheld provided it is shown to be in the public interest. There is a purpose and policy behind this object as stated above. However, in order to substantiate the right of the detaining authority under Section 9(2) of the PASA Act for non disclosure of names, contemporaneous material must be available and that too, non disclosure should be in public interest. Unfortunately, the factual profile in this group of petitions does not support the respondents' case. Nothing has been successfully spelt out which would even remotely warrant exercise of powers in absence of any contemporaneous material under Section 9(2) of the PASA Act.

#. Having taken into consideration all the relevant facts and circumstances, the rival submissions and relevant proposition of law, this Court is of the clear and unambiguous opinion that the order of the detaining authority in both the petitions and the grounds of detention do not indicate the basis of arriving at a subjective satisfaction, and therefore, the questioned detention orders in both the petitions deserve to be quashed and set aside while allowing the petitions.

#. In the result, both the writ petitions are allowed and the questioned detention orders are quashed and set aside. The detenus are ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute, however, without any order as to costs.

(J.N.Bhatt, Acting C.J.)

(sunil)